

107TH CONGRESS  
2D SESSION

# S. 1340

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 2002

Referred to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## AN ACT

To amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Probate Reform  
5       Act of 2002”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The General Allotment Act of 1887  
4 (commonly known as the ‘Dawes Act’), which au-  
5 thorized the allotment of Indian reservations, did not  
6 allow Indian allotment owners to provide for the tes-  
7 tamentary disposition of the land that was allotted  
8 to those owners.

9 (2) The Dawes Act provided that allotments  
10 would descend according to State law of intestate  
11 succession based on the location of the allotment.

12 (3) The Federal Government’s reliance on the  
13 State law of intestate succession with respect to the  
14 descendency of allotments has resulted in numerous  
15 problems affecting Indian tribes, their members, and  
16 the Federal Government. Those problems include—

17 (A) the increasing fractionated ownership  
18 of trust and restricted land as that land is in-  
19 herited by successive generations of owners as  
20 tenants in common;

21 (B) the application of different rules of in-  
22 testate succession to each of a decedent’s inter-  
23 ests in trust and restricted land if that land is  
24 located within the boundaries of more than 1  
25 State, which application makes probate plan-  
26 ning unnecessarily difficult and impedes efforts

1 to provide probate planning assistance or ad-  
2 vice;

3 (C) the absence of a uniform general pro-  
4 bate code for trust and restricted land which  
5 makes it difficult for Indian tribes to work co-  
6 operatively to develop tribal probate codes; and

7 (D) the failure of Federal law to address  
8 or provide for many of the essential elements of  
9 general probate law, either directly or by ref-  
10 erence, which is unfair to the owners of trust  
11 and restricted land and their heirs and devisees  
12 and which makes probate planning more dif-  
13 ficult.

14 (4) Based on the problems identified in para-  
15 graph (3), a uniform Federal probate code would  
16 likely—

17 (A) reduce the number of unnecessary  
18 fractionated interests in trust or restricted land;

19 (B) facilitate efforts to provide probate  
20 planning assistance and advice;

21 (C) facilitate inter-tribal efforts to produce  
22 tribal probate codes pursuant to section 206 of  
23 the Indian Land Consolidation Act (25 U.S.C.  
24 2205); and

1 (D) provide essential elements of general  
 2 probate law that are not applicable on the date  
 3 of enactment of this subtitle to interests in  
 4 trust or restricted land.

5 **SEC. 3. INDIAN PROBATE REFORM.**

6 (a) TESTAMENTARY DISPOSITION.—Subsection (a) of  
 7 section 207 of the Indian Land Consolidation Act (25  
 8 U.S.C. 2206(a)) is amended to read as follows:

9 “(a) TESTAMENTARY DISPOSITION.—

10 “(1) GENERAL DEVISE OF AN INTEREST IN  
 11 TRUST OR RESTRICTED LAND.—

12 “(A) IN GENERAL.—Subject to any appli-  
 13 cable Federal law relating to the devise or de-  
 14 scent of trust or restricted property, or a tribal  
 15 probate code enacted pursuant to section 206,  
 16 the owner of an interest in trust or restricted  
 17 land may devise such an interest to the Indian  
 18 tribe with jurisdiction over the land so devised,  
 19 or to any Indian in trust or restricted status or  
 20 as a passive trust interest (as provided for in  
 21 section 207A).

22 “(B) STATUS.—The devise of an interest  
 23 in trust or restricted land to an Indian under  
 24 subparagraph (A) shall not alter the status of  
 25 such an interest as a trust or restricted interest

1 unless the testator provides that the interest is  
 2 to be held as a passive trust interest.

3 “(2) DEVISE OF TRUST OR RESTRICTED LAND  
 4 IN PASSIVE TRUST OR FEE STATUS.—

5 “(A) IN GENERAL.—Any interest in trust  
 6 or restricted land that is not devised pursuant  
 7 to paragraph (1) may only be devised—

8 “(i) as a life estate to any non-Indian  
 9 person (the remainder interest may only be  
 10 devised pursuant to clause (ii), subpara-  
 11 graph (C), or paragraph (1)(A));

12 “(ii)(I) to the testator’s lineal de-  
 13 scendant or heir of the 1st or 2nd degree  
 14 as a passive trust interest (to be known as  
 15 an ‘eligible passive trust devisee’); or

16 “(II) if the testator does not have an  
 17 heir of the 1st or 2nd degree or a lineal  
 18 descendant, to any lineal descendant of a  
 19 testator’s grandparent as a passive trust  
 20 interest (to be known as an ‘eligible pas-  
 21 sive trust devisee’); or

22 “(iii) in fee status as provided for in  
 23 subparagraph (C).

24 “(B) PRESUMED DEVISE OF PASSIVE  
 25 TRUST INTEREST.—Any devise to an eligible

passive trust devisee, including the devise of a remainder interest from the devise of a life estate under subparagraph (A)(ii), that does not indicate whether the interest is devised as a passive trust interest or a fee interest shall be construed to devise a passive trust interest.

“(C) DEVISE OF A FEE INTEREST.—Subject to subparagraph (D), any interest in trust or restricted land that is not devised pursuant to paragraph (1), or devised to an eligible passive trust devisee pursuant to subparagraph (A), may be devised to a non-Indian in fee status.

“(D) LIMITATION.—Any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464) may only be devised pursuant to such section 4, subparagraph (A) of this paragraph, or paragraph (1) of this subsection.

“(3) DEVISE OF A PASSIVE TRUST INTEREST.—

“(A) IN GENERAL.—The holder of an interest in trust or restricted land that is held as a passive trust interest may devise the interest as a passive trust interest only to—

1 “(i) any Indian or the Indian tribe  
2 that exercises jurisdiction over the interest;

3 “(ii) the holder’s lineal descendants or  
4 heirs of the first or second degree;

5 “(iii) any living descendant of the de-  
6 cedent from whom the holder acquired the  
7 interest by devise or descent; and

8 “(iv) any person who owns a pre-exist-  
9 ing interest or a passive trust interest in  
10 the same parcel of land if the pre-existing  
11 interest is held in trust or restricted status  
12 or in passive trust status.

13 “(B) INELIGIBLE DEVISEES AND INTES-  
14 TATE SUCCESSION.—A passive trust interest  
15 that is devised to a person who is not eligible  
16 under subparagraph (A) or that is not disposed  
17 of by a valid will shall pass pursuant to the ap-  
18 plicable law of intestate succession as provided  
19 for in subsection (b).”.

20 (b) INTESTATE SUCCESSION.—Subsection (b) of sec-  
21 tion 207 of the Indian Land Consolidation Act (25 U.S.C.  
22 2206(b)) is amended to read as follows:

23 “(b) INTESTATE SUCCESSION.—

24 “(1) RULES OF DESCENT.—

“(A) IN GENERAL.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any interest in trust or restricted land that is not disposed of by a valid will shall—

“(i) descend according to a tribal probate code that is approved pursuant to section 206; or

“(ii) in the case of an interest in trust or restricted land to which such a code does not apply, be considered an ‘intestate interest’ and descend pursuant to paragraph (2), this Act, and other applicable Federal law.

“(B) CLASSIFICATIONS.—For purposes of applying this subsection, intestate interests referred to in subparagraph (A)(ii) shall be classified as either—

“(i) a devise or inheritance interest (an interest acquired by a decedent through devise or inheritance); or

“(ii) an acquired interest (an interest acquired by a decedent by any means other than devise or inheritance and an interest

1                   acquired by a decedent through devise or  
2                   inheritance)—

3                   “(I) if the decedent—

4                         “(aa)   acquired   additional  
5                         undivided interests in the same  
6                         parcel as the interest, by a means  
7                         other than devise or inheritance;  
8                         or

9                         “(bb) acquired land adjoin-  
10                        ing the parcel of land that in-  
11                        cludes the interest; or

12                   “(II) if the parcel of land that in-  
13                   cludes the interest includes the dece-  
14                   dent’s spouse’s residence.

15                 “(2) INTESTATE SUCCESSION.—An interest in  
16                 trust or restricted land described in paragraph  
17                 (1)(A)(ii) (an intestate interest) shall descend as  
18                 provided for in this paragraph:

19                         “(A) SURVIVING INDIAN SPOUSE.—If a de-  
20                         cedent is survived by an Indian spouse and the  
21                         decedent’s estate includes—

22                         “(i) one or more acquired interests,  
23                         the decedent’s spouse shall receive all such  
24                         acquired interests;

1 “(ii) one or more devise or inheritance  
2 Interests, and—

3 “(I) the decedent is not survived  
4 by an Indian heir of the first or sec-  
5 ond degree, the decedent’s spouse  
6 shall receive all such devise or inher-  
7 itance interests; or

8 “(II) the decedent is survived by  
9 an Indian heir of the first or second  
10 degree, the decedent’s devise or inher-  
11 itance interest shall descend pursuant  
12 to paragraph (3)(A).

13 “(B) SURVIVING NON-INDIAN SPOUSE.—If  
14 a decedent is survived by a non-Indian spouse  
15 and the decedent’s estate includes—

16 “(i) one or more acquired interests,  
17 the decedent’s spouse shall receive a life  
18 estate in such acquired interest, and if the  
19 decedent is—

20 “(I) survived by an Indian heir of  
21 the 1st or 2nd degree, the remainder  
22 interests shall descend pursuant to  
23 paragraph (3)(A); or

24 “(II) not survived by an Indian  
25 heir of the 1st or 2nd degree, the re-

1                   mainder interest shall descend pursu-  
2                   ant to paragraph (3)(C); or

3                   “(ii) one or more devise or inheritance  
4                   interests, and the decedent is—

5                   “(I) survived by an Indian heir of  
6                   the 1st or 2nd degree, such devise or  
7                   inheritance interests shall descend  
8                   pursuant to paragraph (3)(A); or

9                   “(II) not survived by an Indian  
10                  heir of the 1st or 2nd degree, such de-  
11                  vise or inheritance interest shall de-  
12                  scend pursuant to paragraph (3)(C).

13                  “(C) NO SURVIVING SPOUSE.—If the dece-  
14                  dent is not survived by a spouse, and the dece-  
15                  dent’s estate includes one or more acquired in-  
16                  terests or one or more devise or inheritance in-  
17                  terests and the decedent is—

18                  “(i) survived by an Indian heir of the  
19                  1st or 2nd degree, the acquired interests or  
20                  devise or inheritance interests shall de-  
21                  scend pursuant to paragraph (3)(A);

22                  “(ii) not survived by an Indian heir of  
23                  the 1st or 2nd degree, the acquired inter-  
24                  ests or devise or inheritance interests shall  
25                  descend pursuant to paragraph (3)(C).

1           “(3) RULES APPLICABLE TO INTESTATE SUC-  
2       CESSION.—

3           “(A) INDIAN HEIRS.—For purposes of this  
4       subsection, Indian heirs of the 1st or 2nd de-  
5       gree shall inherit in the following order:

6           “(i) The Indian children of the dece-  
7       dent, in equal shares, or if one or more of  
8       those Indian children do not survive the  
9       decedent, such Indian children of the dece-  
10      dent’s deceased child shall inherit by right  
11      of representation;

12          “(ii) If the decedent has no Indian  
13      children or grandchildren (that take by  
14      representation under clause (i)), to the de-  
15      cedent’s Indian brothers and sisters in  
16      equal shares.

17          “(iii) If the decedent has no Indian  
18      brothers or sisters, to the decedent’s In-  
19      dian parent or parents.

20          “(B) RIGHT OF REPRESENTATION.—For  
21      purpose of this subsection, in any case involving  
22      the determination of a right of representation—

23          “(i) each interest in trust land shall  
24      be equally divided into a number of shares  
25      that equals the sum of—

1                   “(I) the number of surviving  
2 heirs in the nearest degree of kinship;  
3 and

4                   “(II) the number of deceased  
5 persons in that same degree, if any,  
6 who left issue who survive the dece-  
7 dent;

8                   “(ii) each surviving heir described in  
9 clause (i)(I) shall receive 1 share; and

10                   “(iii)(I) each deceased person de-  
11 scribed in clause (i)(II) shall receive 1  
12 share; and

13                   “(II) that share shall be divided  
14 equally among the surviving issue of the  
15 deceased person.

16                   “(C) NO INDIAN HEIRS.—

17                   “(i) IN GENERAL.—For purposes of  
18 this subsection, if a decedent does not have  
19 an Indian heir of the 1st or 2nd degree, an  
20 interest shall descend to an Indian collat-  
21 eral heir who is a co-owner of an interest  
22 owned by the decedent if any.

23                   “(ii) MULTIPLE COLLATERAL  
24 HEIRS.—If—

1                   “(I) more than one Indian collat-  
2                   eral heir owns an interest in an inter-  
3                   est referred to in clause (i), the inter-  
4                   est shall descend to the collateral heir  
5                   that owns the largest undivided inter-  
6                   est in the parcel; or

7                   “(II) two or more collateral heirs  
8                   own equal shares in an interest re-  
9                   ferred to in clause (i), the interest  
10                  passing pursuant to this subsection  
11                  shall be divided equally between those  
12                  collateral heirs that own equal shares.

13                  “(iii) NO OWNERSHIP.—If none of the  
14                  decedent’s collateral heirs own an interest  
15                  in the interest referred to in clause (i), the  
16                  interest shall descend to the Indian tribe  
17                  that exercises jurisdiction over the parcel  
18                  of trust or restricted lands involved, sub-  
19                  ject to clause (iv).

20                  “(iv) ACQUISITION OF INTEREST.—  
21                  Notwithstanding clause (iii), an Indian co-  
22                  owner of a parcel of trust or restricted  
23                  land may acquire an interest subject to  
24                  such clause by paying into the decedent’s  
25                  estate, before the close of the probate of

1           the decedent's estate, the fair market value  
2           of the interest in such land. If more than  
3           1 Indian co-owner (including the Indian  
4           tribe referred to in clause (iii)) offers to  
5           pay for such an interest, the highest bidder  
6           shall acquire the interest.

7           “(v) DEFINITION.—In this subpara-  
8           graph, the term ‘collateral heir’ means the  
9           decedent's aunt, uncle, niece, nephew, and  
10          first cousin.

11          “(4) SPECIAL RULE RELATING TO SURVIVAL.—  
12          For purposes of this section, an individual who fails  
13          to survive a decedent by at least 120 hours is  
14          deemed to have predeceased the decedent for the  
15          purposes of intestate succession, and the heirs of the  
16          decedent shall be determined accordingly. If it is not  
17          established by clear and convincing evidence that an  
18          individual who would otherwise be an heir survived  
19          the decedent by at least 120 hours, the individual  
20          shall be deemed to have failed to survive for the re-  
21          quired time-period for the purposes of the preceding  
22          sentence.

23          “(5) PRETERMITTED SPOUSES AND CHIL-  
24          DREN.—

1           “(A) SPOUSES.—For the purposes of this  
2 section, if the surviving spouse of a testator  
3 married the testator after the testator executed  
4 his or her will, the surviving spouse shall re-  
5 ceive the intestate share in trust or restricted  
6 land that the spouse would have otherwise re-  
7 ceived if the testator had died intestate. The  
8 preceding sentence shall not apply to an inter-  
9 est in trust or restricted land where—

10           “(i) the will is executed before the  
11 date of enactment of this subsection;

12           “(ii) the testator’s spouse is a non-In-  
13 dian and the testator has devised his or  
14 her interests in trust or restricted land to  
15 an Indian or Indians;

16           “(iii) it appears from the will or other  
17 evidence that the will was made in con-  
18 templation of the testator’s marriage to  
19 the surviving spouse;

20           “(iv) the will expresses the intention  
21 that it is to be effective notwithstanding  
22 any subsequent marriage; or

23           “(v) the testator provided for the  
24 spouse by a transfer of funds or property  
25 outside of the will and an intent that the

1 transfer be in lieu of a testamentary provi-  
2 sion is demonstrated by the testator's  
3 statements or is reasonably inferred from  
4 the amount of the transfer or other evi-  
5 dence.

6 “(B) CHILDREN.—For the purposes of this  
7 section, if a testator executed his or her will  
8 prior to the birth or adoption of 1 or more chil-  
9 dren of the testator and the omission is the  
10 product of inadvertence rather than an inten-  
11 tional omission, those children shall share in the  
12 decedent's intestate interests in trust or re-  
13 stricted land as if the decedent had died intes-  
14 tate. Any person recognized as an heir by virtue  
15 of adoption under the Act of July 8, 1940 (54  
16 Stat 746), shall be treated as a decedent's child  
17 under this section.

18 “(6) DIVORCE.—

19 “(A) SURVIVING SPOUSE.—

20 “(i) IN GENERAL.—For the purposes  
21 of this section, an individual who is di-  
22 vorced from the decedent, or whose mar-  
23 riage to the decedent has been annulled,  
24 shall not be considered to be a surviving  
25 spouse unless, by virtue of a subsequent

1 marriage, the individual is married to the  
2 decedent at the time of death. A decree of  
3 separation that does not terminate the sta-  
4 tus of husband and wife shall not be con-  
5 sidered a divorce for the purposes of this  
6 subsection.

7 “(ii) RULE OF CONSTRUCTION.—  
8 Nothing in clause (i) shall be construed to  
9 prevent an entity responsible for adjudi-  
10 cating interests in trust or restricted land  
11 from giving force and effect to a property  
12 right settlement if one of the parties to the  
13 settlement dies before the issuance of a  
14 final decree dissolving the marriage of the  
15 parties to the property settlement.

16 “(B) EFFECT OF SUBSEQUENT DIVORCE  
17 ON A WILL OR DEVISE.—If after executing a  
18 will the testator is divorced or the marriage of  
19 the testator is annulled, upon the effective date  
20 of the divorce or annulment any disposition of  
21 interests in trust or restricted land made by the  
22 will to the former spouse shall be deemed to be  
23 revoked unless the will expressly provides other-  
24 wise. Property that is prevented from passing  
25 to a former spouse based on the preceding sen-

1           tence shall pass as if the former spouse failed  
 2           to survive the decedent. Any provision of a will  
 3           that is revoked solely by operation of this para-  
 4           graph shall be revived by the testator's remar-  
 5           riage to the former spouse.

6           “(7) NOTICE.—To the extent practicable, the  
 7           Secretary shall notify the owners of trust and re-  
 8           stricted land of the provisions of this Act. The notice  
 9           may, at the discretion of the Secretary, be provided  
 10          together with the notice required under section  
 11          207(g).”.

12          (c) RULE OF CONSTRUCTION.—Section 207 of the  
 13          Indian Land Consolidation Act (25 U.S.C. 2206) is  
 14          amended by adding at the end the following:

15          “(h) RULE OF CONSTRUCTION.—For purposes of  
 16          subsections (a) and (b), any reference to ‘applicable Fed-  
 17          eral law’ shall be construed to include Public Law 91-627  
 18          (84 Stat. 1874, amending section 7 of the Act of August  
 19          9, 1946), Public Law 92-377 (86 Stat. 530), and Public  
 20          Law 92-443 (86 Stat. 744). Nothing in this section shall  
 21          be construed to amend or alter such Public Laws or any  
 22          other Federal law that provides for the devise and descent  
 23          of any trust or restricted lands located on a specific Indian  
 24          reservation.”.

1 (d) PASSIVE TRUST STATUS FOR TRUST OR RE-  
 2 STRICTED LAND.—The Indian Land Consolidation Act is  
 3 amended by inserting after section 207 (25 U.S.C. 2206)  
 4 the following:

5 **“SEC. 207A. PASSIVE TRUST STATUS FOR TRUST OR RE-**  
 6 **STRICTED LAND.**

7 “(a) PASSIVE TRUST.—The owner of an interest in  
 8 trust or restricted land may submit an application to the  
 9 Secretary requesting that such interest be held in passive  
 10 trust interest status. Such application may authorize the  
 11 Secretary to amend or alter any existing lease or agree-  
 12 ment with respect to the interest that is the subject of  
 13 the application.

14 “(b) APPROVAL.—Upon the approval of an applica-  
 15 tion by the Secretary under subsection (a), an interest in  
 16 trust or restricted land shall be held as a passive trust  
 17 interest in accordance with this section.

18 “(c) REQUIREMENTS.—Except as provided in this  
 19 section, an interest in trust or restricted land that is held  
 20 as a passive trust interest under this section—

21 “(1) shall continue to be covered under any ap-  
 22 plicable tax-exempt status and continue to be subject  
 23 to any restrictions on alienation until such interest  
 24 is patented in fee status;

1           “(2) may, without the approval of the Sec-  
2       retary, be—

3           “(A) leased;

4           “(B) mortgaged pursuant to the Act of  
5       March 29, 1956 (25 U.S.C. 483a); or

6           “(C) sold or conveyed to an Indian, the In-  
7       dian tribe that exercises jurisdiction over the in-  
8       terest, or a co-owner of an interest in the same  
9       parcel of land if the co-owner owns a pre-exist-  
10      ing trust, restricted interest, or a passive trust  
11      interest in the parcel; and

12          “(3) may be subject to an ordinance or resolu-  
13      tion enacted under subsection (d).

14          “(d) ORDINANCE OR RESOLUTION FOR REMOVAL OF  
15      STATUS.—

16          “(1) IN GENERAL.—The governing body of the  
17      Indian tribe that exercises jurisdiction over an inter-  
18      est in trust or restricted land that is held as a pas-  
19      sive trust interest in accordance with this section  
20      may enact an ordinance or resolution to allow the  
21      owner of such an interest to apply to the Secretary  
22      for the removal of the trust or restricted status of  
23      such portion of such lands that are subject to the  
24      tribe’s jurisdiction.

1           “(2) REVIEW BY SECRETARY.—The Secretary  
2       shall review and may approve an ordinance or reso-  
3       lution enacted by an Indian tribe pursuant to para-  
4       graph (1) if the Secretary determines that the ordi-  
5       nance or resolution is consistent with this Act and  
6       will not increase fractionated ownership of Indian  
7       land.

8       “(e) REVENUES OR ROYALTIES.—

9           “(1) IN GENERAL.—Except as provided in para-  
10      graph (2), the Secretary shall not be responsible for  
11      the collection of or accounting for any lease revenues  
12      or royalties accruing to an interest held as a passive  
13      trust interest by any person under this section.

14          “(2) EXCEPTION.—Paragraph (1) shall not  
15      apply to an interest described in such paragraph if  
16      the Secretary approves an application to have such  
17      interest be taken into active trust status on behalf  
18      of an Indian or an Indian tribe pursuant to regula-  
19      tions enacted by the Secretary.

20          “(3) RULE OF CONSTRUCTION.—Nothing in  
21      this subsection shall be construed to alter the au-  
22      thority or responsibility of the Secretary, if any, with  
23      respect to an interest in trust or restricted land held  
24      in active trust status, including an undivided inter-

1       est within the same parcel of land as an undivided  
2       passive trust interest.

3       “(f) JURISDICTION OVER PASSIVE TRUST INTER-  
4   EST.—An Indian tribe that exercises jurisdiction over an  
5   interest in trust or restricted land that is devised or held  
6   as a passive trust interest under this section shall continue  
7   to exercise jurisdiction over the land that is held as a pas-  
8   sive trust interest and any person holding, leasing, or oth-  
9   erwise using such land shall be deemed to have consented  
10  to the jurisdiction of such a tribe with respect to the use  
11  of such land, including any impacts associated with any  
12  use of such lands.

13       “(g) PROBATE OF PASSIVE TRUST INTERESTS.—An  
14  interest in trust or restricted land that is held as a passive  
15  trust interest under this section shall be subject to probate  
16  by the Secretary pursuant to this Act and other laws ap-  
17  plicable to the probate of trust or restricted land. Any in-  
18  terested party may file an application to commence the  
19  probate of an interest in trust or restricted land held as  
20  a passive trust interest.

21       “(h) REGULATIONS.—The Secretary shall promul-  
22  gate regulations to implement this section.”.

23       (e) PARTITION.—Section 205 of the Indian Land  
24  Consolidation Act (25 U.S.C. 2204) is amended by adding  
25  at the end the following:

1 “(c) PARTITION.—

2 “(1) IN GENERAL.—Notwithstanding any other  
3 provision of law, in accordance with this subsection  
4 and subject to paragraphs (2), (3), and (4)—

5 “(A) an Indian tribe may apply to the Sec-  
6 retary for the partition of a parcel of land that  
7 is—

8 “(i) located within the reservation of  
9 the Indian tribe; or

10 “(ii) otherwise under the jurisdiction  
11 of the Indian tribe; and

12 “(B) the Secretary may commence a proc-  
13 ess for partitioning a parcel of land as provided  
14 for in paragraphs (2)(B) and (6)(B), if—

15 “(i) an Indian tribe owns an undi-  
16 vided interest in the parcel of land and  
17 such tribe consents to the partition;

18 “(ii)(I) the tribe referred to in clause  
19 (i) meets the ownership requirement of  
20 clauses (i) or (ii) of paragraph (2)(B); or

21 “(II) the Secretary determines that it  
22 is reasonable to believe that the partition  
23 would be in accordance with paragraph  
24 (2)(B)(iii); and

1                   “(iii) the tribe referred to in para-  
2                   graph (3), if any, consents to the partition.

3       For purposes of this subsection, the term ‘eligible  
4       Indian tribe’ means an Indian tribe described in sub-  
5       paragraph (A) and (B)(i).

6                   “(2) TRIBAL OWNERSHIP.—A parcel of land  
7       may be partitioned under this subsection if, with re-  
8       spect to the eligible Indian tribe involved—

9                   “(A) the tribe owns an undivided interest  
10       in the parcel of land; and

11                   “(B)(i) the tribe owns 50 percent or more  
12       of the undivided interest in the parcel;

13                   “(ii) the tribe is the owner of the largest  
14       quantity of undivided interest in the parcel; or

15                   “(iii) the owners of undivided interests  
16       equal to at least 50 percent of the undivided in-  
17       terests in the parcel (including any undivided  
18       interest owned by the tribe) consent or do not  
19       object to the partition.

20                   “(3) TRIBAL CONSENT.—A parcel of land that  
21       is located within the reservation of an Indian tribe  
22       or otherwise under the jurisdiction of an Indian tribe  
23       shall be partitioned under this subsection only if the  
24       Indian tribe does not object to the partition.

1           “(4) APPLICABILITY.—This subsection shall not  
2       apply to any parcel of land that is the bona fide resi-  
3       dence of any person unless the person consents to  
4       the partition in writing.

5           “(5) PARTITION IN KIND.—

6           “(A) IN GENERAL.—The Secretary shall  
7       commence the partition process described in  
8       subparagraph (B) if—

9           “(i) an eligible Indian tribe applies to  
10       partition a parcel of land under this para-  
11       graph; and

12          “(ii)(I) the Secretary determines that  
13       the Indian tribe meets the applicable own-  
14       ership requirements of clause (i) or (ii) of  
15       paragraph (2)(B); or

16          “(II) the Secretary determines that it  
17       is reasonable to believe that the partition  
18       would be in accordance with paragraph  
19       (2)(B)(iii).

20          “(B) PARTITION PROCESS.—In carrying  
21       out any partition, the Secretary shall—

22          “(i) provide, to each owner of any un-  
23       divided interest in the parcel to be parti-  
24       tioned, through publication or other appro-

1           priate means, notice of the proposed parti-  
2           tion;

3           “(ii) make available to any interested  
4           party a copy of any proposed partition  
5           plan submitted by an Indian tribe or pro-  
6           posed by the Secretary; and

7           “(iii) review—

8                   “(I) any proposed partition plan  
9                   submitted by any owner of an undi-  
10                  vided interest in the parcel; and

11                  “(II) any comments or objections  
12                  concerning a partition, or any pro-  
13                  posed plan of partition, submitted by  
14                  any owner or any other interested  
15                  party.

16           “(C) DETERMINATION NOT TO PARTI-  
17           TION.—If the Secretary determines that a par-  
18           cel of land cannot be partitioned in a manner  
19           that is fair and equitable to the owners of the  
20           parcel, the Secretary shall inform each owner of  
21           the parcel of—

22                   “(i) the determination of the Sec-  
23                   retary; and

24                   “(ii) the right of the owner to appeal  
25                  the determination.

1           “(D) PARTITION WITH CONSENT OF  
2 QUALIFIED INDIAN TRIBE.—If the Secretary de-  
3 termines that a parcel of land may be parti-  
4 tioned in a manner that is fair and equitable to  
5 the owners of the parcel, and the Indian tribe  
6 meets the applicable ownership requirements  
7 under clause (i) or (ii) of paragraph (2)(B), the  
8 Secretary shall—

9           “(i) approve a plan of partition;

10          “(ii) provide notice to the owners of  
11 the parcel of the determination of the Sec-  
12 retary;

13          “(iii) make a copy of the plan of par-  
14 tition available to each owner of the parcel;  
15 and

16          “(iv) inform each owner of the right  
17 to appeal the determination of the Sec-  
18 retary to partition the parcel in accordance  
19 with the plan.

20          “(E) PARTITION WITH CONSENT; IMPLIED  
21 CONSENT.—If the Secretary determines that a  
22 parcel may be partitioned in a manner that is  
23 fair and equitable to the owners of the parcel,  
24 but the Indian tribe involved does not meet the  
25 applicable ownership requirements under clause

1 (i) or (ii) of paragraph (2)(B), the Secretary  
2 shall—

3 “(i)(I) make a plan of partition avail-  
4 able to the owners of the parcel; and

5 “(II) inform the owners that the par-  
6 cel will be partitioned in accordance with  
7 the plan if the owners of 50 percent or  
8 more of undivided ownership interest in  
9 the parcel either—

10 “(aa) consent to the partition; or

11 “(bb) do not object to the parti-  
12 tion by such deadline as may be es-  
13 tablished by the Secretary;

14 “(ii) if the owners of 50 percent or  
15 more of undivided ownership interest in  
16 the parcel consent to the partition or do  
17 not object by a deadline established by the  
18 Secretary under clause (i)(II)(bb), inform  
19 the owners of the parcel that—

20 “(I) the plan for partition is  
21 final; and

22 “(II) the owners have the right  
23 to appeal the determination of the  
24 Secretary to partition the parcel; and

1 “(iii) if the owners of 50 percent or  
2 more of the undivided ownership interest  
3 in the parcel object to the partition, inform  
4 the Indian tribe of the objection.

5 “(F) SUCCESSIVE PARTITION PLANS.—In  
6 carrying out subparagraph (E) in accordance  
7 with paragraph (2)(B)(iii), the Secretary may,  
8 in accordance with subparagraph (E)—

9 “(i) approve 1 or more successive  
10 plans of partition; and

11 “(ii) make those plans available to the  
12 owners of the parcel.

13 “(G) PLAN OF PARTITION—A plan of par-  
14 tition approved by the Secretary in accordance  
15 with subparagraph (D) or (E)—

16 “(i) may determine that 1 or more of  
17 the undivided interests in a parcel are not  
18 susceptible to a partition in kind;

19 “(ii) may provide for the sale or ex-  
20 change of those undivided interests to—

21 “(I) 1 or more of the owners of  
22 undivided interests in the parcel; or

23 “(II) the Secretary in accordance  
24 with section 213; and

1 “(iii) shall provide that the sale of any  
2 undivided interest referred to in clause (ii)  
3 shall be for not less than the fair market  
4 value of the interest.

5 “(6) PARTITION BY SALE.—

6 “(A) IN GENERAL.—The Secretary shall  
7 commence the partition process described in  
8 subparagraph (B) if—

9 “(i) an eligible Indian tribe applies to  
10 partition a parcel of land under this sub-  
11 section; and

12 “(ii)(I) the Secretary determines that  
13 the Indian tribe meets the applicable own-  
14 ership requirements of clause (i) or (ii) of  
15 paragraph (2)(B); or

16 “(II) the Secretary determines that it  
17 is reasonable to believe that the partition  
18 would be in accordance with paragraph  
19 (2)(B)(iii).

20 “(B) PARTITION PROCESS.—In carrying  
21 out any partition of a parcel, the Secretary—

22 “(i) shall conduct a preliminary ap-  
23 praisal of the parcel;

1 “(ii) shall provide, to the owners of  
2 the parcel, through publication or other ap-  
3 propriate means—

4 “(I) notice of the application of  
5 the Indian tribe to partition the par-  
6 cel; and

7 “(II) access to the preliminary  
8 appraisal conducted in accordance  
9 with clause (i);

10 “(iii) shall inform each owner of the  
11 parcel of the right to submit to the Sec-  
12 retary comments relating to the prelimi-  
13 nary appraisal;

14 “(iv) may, based on comments re-  
15 ceived under clause (iii), modify the pre-  
16 liminary appraisal or provide for the con-  
17 duct of a new appraisal; and

18 “(v) shall—

19 “(I) issue a final appraisal for  
20 the parcel;

21 “(II) provide to the owners of the  
22 parcel and the appropriate Indian  
23 tribes access to the final appraisal;  
24 and

1 “(III) inform the Indian tribes of  
2 the right to appeal the final appraisal.

3 “(C) PURCHASE BY QUALIFIED INDIAN  
4 TRIBE.—If an eligible Indian tribe agrees to  
5 pay fair market value for a partitioned parcel,  
6 as determined by the final appraisal of the par-  
7 cel issued under subparagraph (B)(v)(I)  
8 (including any appraisal issued by the Secretary  
9 after an appeal by the Indian tribe under sub-  
10 paragraph (B)(v)(III)), and the Indian tribe  
11 meets the applicable ownership requirements of  
12 clause (i) or (ii) of paragraph (2)(B), the Sec-  
13 retary shall—

14 “(i) provide to each owner of the par-  
15 cel notice of the decision of the Indian  
16 tribe; and

17 “(ii) inform the owners of the right to  
18 appeal the decision (including the right to  
19 appeal any final appraisal of the parcel re-  
20 ferred to in subparagraph (B)(v)(III)).

21 “(D) PARTITION WITH CONSENT; IMPLIED  
22 CONSENT.—

23 “(i) IN GENERAL.—If an eligible In-  
24 dian tribe agrees to pay fair market value  
25 for a partitioned parcel, as determined by

1 the final appraisal of the parcel issued  
2 under subparagraph (B)(v)(I) (including  
3 any appraisal issued by the Secretary after  
4 an appeal by the Indian tribe under sub-  
5 paragraph (B)(v)(III)), but does not meet  
6 the applicable ownership requirements of  
7 clause (i) or (ii) of paragraph (2)(B), the  
8 Secretary shall—

9 “(I) provide notice to the owners  
10 of the undivided interest in the parcel;  
11 and

12 “(II) inform the owners that the  
13 parcel will be partitioned by sale un-  
14 less the partition is opposed by the  
15 owners of 50 percent or more of the  
16 undivided ownership interest in the  
17 parcel.

18 “(ii) FAILURE TO OBJECT TO PARTI-  
19 TION.—If the owners of 50 percent or  
20 more of undivided ownership interest in or  
21 to a parcel consent to the partition or the  
22 parcel, or do not object to the partition by  
23 such deadline as may be established by the  
24 Secretary, the Secretary shall inform the  
25 owners of the parcel of the right to appeal

1 the determination of the Secretary  
2 (including the results of the final appraisal  
3 issued under subparagraph (B)(v)(I)).

4 “(iii) OBJECTION TO PARTITION.—If  
5 the owners of 50 percent or more of the  
6 undivided ownership interest in a parcel  
7 object to the partition of the parcel—

8 “(I) the Secretary shall notify the  
9 Indian tribe of the objection; and

10 “(II) the Indian tribe and the  
11 Secretary may agree to increase the  
12 amount offered to purchase the undi-  
13 vided ownership interests in the par-  
14 cel.

15 “(7) ENFORCEMENT.—

16 “(A) IN GENERAL.—If, with respect to a  
17 parcel, a partition in kind is approved under  
18 subparagraph (D) or (E) of paragraph (5), or  
19 a partition by sale is approved under paragraph  
20 (6)(C), and the owner of an interest in or to the  
21 parcel fails or refuses to convey the interest to  
22 the Indian tribe, the Indian tribe or the United  
23 States may—

1 “(i) bring a civil action in the United  
 2 States district court for the district in  
 3 which the parcel is located; and

4 “(ii) request the court to issue an ap-  
 5 propriate order for the partition in kind, or  
 6 partition by sale to the Indian tribe, of the  
 7 parcel.

8 “(B) FEDERAL ROLE.—With respect to  
 9 any civil action brought under subparagraph  
 10 (A)—

11 “(i) the United States—

12 “(I) shall receive notice of the  
 13 civil action; and

14 “(II) may be a party to the civil  
 15 action; and

16 “(ii) no civil action brought under this  
 17 section shall be dismissed, and no relief re-  
 18 quested shall be denied, on the ground that  
 19 the civil action is against the United States  
 20 or that the United States is an indispen-  
 21 sable party.”.

22 **SEC. 4. OTHER AMENDMENTS.**

23 (a) OTHER AMENDMENTS.—The Indian Land Con-  
 24 solidation Act (25 U.S.C. 2201 et seq.) is amended—

1           (1) in section 205(a) (25 U.S.C. 2204(a)), by  
 2           striking “over 50 per centum of the undivided inter-  
 3           ests” and inserting “undivided interests equal to at  
 4           least 50 percent of the undivided interest”;

5           (2) in section 206 (25 U.S.C. 2205)—

6                   (A) in subsection (a), by striking para-  
 7                   graph (3) and inserting the following:

8           “(3) TRIBAL PROBATE CODES.—The Secretary  
 9           shall not approve a tribal probate code, or an  
 10          amendment to such a code, that prevents the devise  
 11          of an interest in trust or restricted land to—

12                   “(A) an Indian lineal descendant of the  
 13                   original allottee; or

14                   “(B) to an Indian who is not a member of  
 15                   the tribe that exercises jurisdiction over such an  
 16                   interest;

17          unless the code provides for the renouncing of inter-  
 18          ests (to eligible devisees pursuant to such a code),  
 19          the opportunity for a devisee who is the testator’s  
 20          spouse or lineal descendant to reserve a life estate,  
 21          and payment of fair market value in the manner  
 22          prescribed under subsection (c)(2).”;

23                   (B) in subsection (c)(1)—

1 (i) by striking “section 207(a)(6)(A)”  
 2 and inserting “sections 207(a)(2)(A)(ii),  
 3 207(a)(2)(C), and 207(a)(3)”; and

4 (ii) by striking the last sentence and  
 5 inserting “The Secretary shall transfer  
 6 such payments to any person or persons  
 7 who would have received an interest in  
 8 land if the interest had not been acquired  
 9 by the tribe pursuant to this paragraph.”;  
 10 and

11 (C) in subsection (c)(2)—

12 (i) in subparagraph (A)—

13 (I) by striking “(A) IN GEN-  
 14 ERAL.—Paragraph” and inserting the  
 15 following:

16 “(A) NONAPPLICABILITY TO CERTAIN IN-  
 17 TERESTS.—

18 “(i) IN GENERAL.—Paragraph”;

19 (II) by striking “if, while” and  
 20 inserting the following: “if—

21 “(I) while”;

22 (III) by striking the period and  
 23 inserting “; or”; and

24 (IV) by adding at the end the fol-  
 25 lowing:

1                   “(II) the interest is part of a  
2                   family farm that is devised to a mem-  
3                   ber of the decedent’s family if the dev-  
4                   isee agrees that the Indian tribe that  
5                   exercises jurisdiction over the land  
6                   will have the opportunity to acquire  
7                   the interest for fair market value if  
8                   the interest is offered for sale to an  
9                   entity that is not a member of the  
10                  family of the owner of the land.

11               “(ii) RECORDING OF INTEREST.—  
12               Upon the request of an Indian tribe de-  
13               scribed in clause (i)(II), a restriction relat-  
14               ing to the acquisition by such tribe of an  
15               interest in the family farm involved shall  
16               be recorded as part of the deed relating to  
17               the interest involved.

18               “(iii) RULE OF CONSTRUCTION.—  
19               Nothing in clause (i)(II) shall be construed  
20               to prevent or limit the ability of an owner  
21               of land to which that clause applies to  
22               mortgage the land or to limit the right of  
23               the entity holding such a mortgage to fore-  
24               close or otherwise enforce such a mortgage  
25               agreement pursuant to applicable law.

1                   “(iv) DEFINITION.—In this para-  
 2                   graph, the term ‘member of the decedent’s  
 3                   family’ means the decedent’s lineal de-  
 4                   scendant, a lineal descendant of the grand-  
 5                   parent of the decedent, the spouse of any  
 6                   such descendant, or the decedent’s  
 7                   spouse.”; and

8                   (ii) in subparagraph (B), by striking  
 9                   “subparagraph (A)” and all that follows  
 10                  through “207(a)(6)(B)” and inserting  
 11                  “paragraph (1)”; and

12                  (3) in section 207 (25 U.S.C. 2206)—

13                  (A) in subsection (c)—

14                  (i) by redesignating paragraph (3) as  
 15                  paragraph (4); and

16                  (ii) by inserting after paragraph (2)  
 17                  the following:

18                  “(3) ALIENATION OF JOINT TENANCY INTER-  
 19                  ESTS.—

20                  “(A) IN GENERAL.—With respect to any  
 21                  interest held as a joint tenancy pursuant to this  
 22                  subsection—

23                  “(i) nothing in this subsection shall be  
 24                  construed to alter the ability of the owner  
 25                  of such an interest to convey a life estate

1 in the owner's undivided joint tenancy in-  
 2 terest; and

3 “(ii) only the last remaining owner of  
 4 such an interest may devise or convey  
 5 more than a life estate in such an interest.

6 “(B) APPLICATION OF PROVISION.—This  
 7 paragraph shall not apply to any conveyance,  
 8 sale, or transfer that is part of an agreement  
 9 referred to in subsection (e) or to a co-owner of  
 10 a joint tenancy interest.”; and

11 (B) in subsection (g)(5), by striking “this  
 12 section” and inserting “subsections (a) and  
 13 (b)”;

14 (4) in section 213 (25 U.S.C. 2212)—

15 (A) in subsection (a)(2), by striking “(A)  
 16 IN GENERAL.—” and all that follows through  
 17 “subparagraph (A), the Secretary” and insert-  
 18 ing “The Secretary”;

19 (B) in subsection (b)(4), by inserting be-  
 20 fore the period the following: “through the use  
 21 of policies and procedures designed to accom-  
 22 modate the voluntary sale of interests under the  
 23 pilot program (established by this Act) though  
 24 the elimination of duplicate conveyance docu-  
 25 ments, administrative proceedings, and trans-

1 actions, notwithstanding the existence of any  
2 otherwise applicable policy, procedure, or regu-  
3 lation”; and

4 (C) in subsection (c)—

5 (i) in paragraph (1)(A), by striking  
6 “landowner upon payment” and all that  
7 follows through the period and inserting  
8 the following: “landowner—

9 “(i) upon payment by the Indian land-  
10 owner of the amount paid for the interest  
11 by the Secretary; or

12 “(ii) if the Indian referred to in this  
13 subparagraph provides assurance that the  
14 purchase price will be paid by pledging rev-  
15 enue from any source, including trust re-  
16 sources, and the Secretary determines that  
17 the purchase price will be paid in a timely  
18 and efficient manner.”;

19 (ii) in paragraph (1)(B), by inserting  
20 “unless the interest is subject to a fore-  
21 closure of a mortgage pursuant to the Act  
22 of March 29, 1956 (25 U.S.C. 483a)” be-  
23 fore the period; and

1 (iii) in paragraph (3), by striking “10  
 2 percent of more of the undivided interests”  
 3 and inserting “an undivided interest”;  
 4 (5) in section 214 (25 U.S.C. 2213), by striking  
 5 subsection (b) and inserting the following:

6 “(b) APPLICATION OF REVENUE FROM ACQUIRED  
 7 INTERESTS TO LAND CONSOLIDATION PILOT PRO-  
 8 GRAM.—

9 “(1) IN GENERAL.—The Secretary shall have a  
 10 lien on any revenue accruing to an interest described  
 11 under subsection (a) until the Secretary provides for  
 12 the removal of the lien under paragraph (3) or (4).

13 “(2) REQUIREMENTS.—Until Secretary removes  
 14 the lien from an interest of land as provided for in  
 15 paragraph (1)—

16 “(A) any lease, resource sale contract,  
 17 right-of-way, or other document evidencing a  
 18 transaction affecting the interest shall contain a  
 19 clause providing that all revenue derived from  
 20 the interest shall be paid to the Secretary;

21 “(B) any revenue derived from any interest  
 22 acquired by the Secretary pursuant to section  
 23 213 shall be paid into the fund created under  
 24 section 216; and

1           “(C) the Secretary may approve a trans-  
2           action covered under this section on behalf of a  
3           tribe notwithstanding any other provision of  
4           law, including section 16 of the Act of June 18,  
5           1934 (commonly referred to as the Indian Re-  
6           organization Act, (25 U.S.C. 476)).

7           “(3) FINDINGS BY SECRETARY.—The Secretary  
8           may remove a lien referred to in (1) if the Secretary  
9           makes a finding that—

10           “(A) the costs of administering the interest  
11           will equal or exceed the projected revenues for  
12           the parcel of land involved;

13           “(B) in the discretion of the Secretary, it  
14           will take an unreasonable period of time for the  
15           parcel of land to generate revenue that equals  
16           the purchase price paid for the interest; or

17           “(C) a subsequent decrease in the value of  
18           land or commodities associated with the parcel  
19           of land make it likely that the interest will be  
20           unable to generate revenue that equals the pur-  
21           chase price paid for the interest in a reasonable  
22           time.

23           “(4) REMOVAL OF LIEN.—Pursuant to the con-  
24           sultations referred to in section 213(b)(3), the Sec-  
25           retary shall periodically remove the lien referred to

1 in paragraph (1) from interests in land acquired by  
2 the Secretary.”;

3 (6) in section 216 (25 U.S.C. 2215)—

4 (A) in subsection (a), strike paragraph (2)  
5 and insert the following:

6 “(2) collect all revenues received from the lease,  
7 permit, or sale of resources from interests acquired  
8 under section 213 or paid by Indian landowners  
9 under section 213.”; and

10 (B) in subsection (b)—

11 (i) in paragraph (1)—

12 (I) in the matter preceding sub-  
13 paragraph (A), by striking “Subject  
14 to paragraph (2), all” and inserting  
15 “All”;

16 (II) in subparagraph (A), by  
17 striking “and” at the end;

18 (III) in subparagraph (B), by  
19 striking the period and inserting “;  
20 and”; and

21 (IV) by adding at the end the fol-  
22 lowing:

23 “(C) be used to acquire undivided interests  
24 on the reservation where the income was de-  
25 rived.”; and

1 (ii) by striking paragraph (2) and in-  
 2 serting the following:

3 “(2) USE OF FUNDS.—The Secretary may uti-  
 4 lize the revenue deposited in the Acquisition Fund  
 5 under paragraph (1) to acquire some or all of the  
 6 undivided interests in any parcels of land pursuant  
 7 to section 205.”;

8 (7) in section 217 (25 U.S.C. 2216)—

9 (A) in subsection (e)(3), by striking  
 10 “prospective applicants for the leasing, use, or  
 11 consolidation of” and insert “any person that is  
 12 leasing, using or consolidating, or is applying  
 13 to, lease, use, or consolidate,”; and

14 (B) by striking subsection (f) and inserting  
 15 the following:

16 “(f) PURCHASE OF LAND BY TRIBE.—

17 “(1) IN GENERAL.—Before the Secretary ap-  
 18 proves an application to terminate the trust status  
 19 or remove the restrictions on alienation from a par-  
 20 cel of trust or restricted land, the Indian tribe that  
 21 exercises jurisdiction over such a parcel shall have  
 22 the opportunity to match any offer contained in such  
 23 application, or where there is no purchase price of-  
 24 fered, to acquire the interest in such land by paying  
 25 the fair market value of such interest.

1           “(2) EXCEPTION FOR FAMILY FARMS.—Para-  
 2       graph (1) shall not apply to a parcel of trust or re-  
 3       stricted land that is part of a family farm that is  
 4       conveyed to a member of the landowner’s family (as  
 5       defined in section 206(c)(2)(A)(iv)) if the tribe that  
 6       exercises jurisdiction over the land is afforded the  
 7       opportunity to purchase the interest if the interest  
 8       is offered for sale to an entity that is not a member  
 9       of the family of the owner of the land. Section  
 10      206(c)(2)(A) shall apply with respect to the record-  
 11      ing and mortgaging of the trust or restricted land  
 12      referred to in the preceding sentence.”; and

13           (8) in section 219(b)(1)(A) (25 U.S.C.  
 14      2219(b)(1)(A)), by striking “100” and inserting  
 15      “90”.

16      (b) DEFINITION.—

17           (1) IN GENERAL.—Section 202(2) of the Indian  
 18      Land Consolidation Act (25 U.S.C. 2201(2)) is  
 19      amended—

20           (A) by striking “means any” and inserting  
 21      the following: “means—

22           “(A) any”;

23           (B) by striking “or any person who has  
 24      been found to meet” and inserting the fol-  
 25      lowing: “or

1 “(B) any person who meets”; and

2 (C) by striking “if the Secretary” and all  
3 that follows through the semicolon and insert-  
4 ing “, except that the Secretary may promul-  
5 gate regulations to exclude any definition if the  
6 Secretary determines that the definition is not  
7 consistent with the purposes of this Act, or

8 “(C) with respect to the ownership, devise,  
9 or descent of trust or restricted land in the  
10 State of California, any person who meets the  
11 definition of Indians of California as contained  
12 in section 1 of the Act of May 18, 1928 (25  
13 U.S.C. 651), until otherwise provided by Con-  
14 gress pursuant to section 809(b) of Public Law  
15 94-437 (25 U.S.C. 1679(b));”.

16 (2) EFFECTIVE DATE.—Any exclusion referred  
17 to in the amendment made by paragraph (1)(C)  
18 shall apply only to those decedents who die after the  
19 Secretary of the Interior promulgates the regulation  
20 providing for such exclusion.

21 (c) MORTGAGES AND DEEDS OF TRUST.—The Act  
22 of March 29, 1956 (25 U.S.C. 483a) is amended in the  
23 first sentence of subsection (a) by inserting “(including  
24 land owned by any person in passive trust status pursuant

1 to section 207A of the Indian Land Consolidation Act)”  
 2 after “land” the first place that such appears.

3 (d) ISSUANCE OF PATENTS.—Section 5 of the Act of  
 4 February 8, 1887 (25 U.S.C. 348) is amended by striking  
 5 the second proviso and inserting the following: “*Provided,*  
 6 That the rules of intestate succession under the Indian  
 7 Land Consolidation Act (25 U.S.C. 2201 et seq.)  
 8 (including a tribal probate code approved under that Act  
 9 or regulations promulgated under that Act) shall apply  
 10 thereto after those patents have been executed and deliv-  
 11 ered:”.

12 (e) TRANSFERS OF RESTRICTED INDIAN LAND.—  
 13 Section 4 of the Act of June 18, 1934 (25 U.S.C. 464),  
 14 is amended in the first proviso by striking “, in accordance  
 15 with” and all that follows through the colon and inserting  
 16 “in accordance with the Indian Land Consolidation Act  
 17 (25 U.S.C. 2201 et seq.) (including a tribal probate code  
 18 approved under that Act or regulations promulgated under  
 19 that Act):”.

20 **SEC. 5. EFFECTIVE DATE.**

21 This amendment made by this Act shall not apply  
 22 to the estate of an individual who dies prior to the later  
 23 of—

24 (1) the date that is 1 year after the date of en-  
 25 actment of this Act; or

1           (2) the date specified in section 207(g)(5) of  
 2           the Indian Land Consolidation Act (25 U.S.C.  
 3           2206(g)(5)).

Passed the Senate November 20, 2002.

Attest:

JERI THOMSON,  
*Secretary.*